

6

S.B. CIVIL WRIT PETITION NO.5717/1993
(Dr. Prakesh Chandra Murdia Vs. State of Raj. & Anr.)

Date:- 27.07.2007

HON'BLE MR. RAJESH BALIA,J.

Mr. M.R.Singhvi, for the petitioner.
Mr. L.R.Upadhyay, Dy.G.A.

The issue raised in this writ petition is that the petitioner has claimed for promotion before Mrs. Dr. Sati Punjabi as a Professor in specialty of Microbiology.

The contention of the learned counsel for the petitioner is that promotion on the post of professor from the post of Associate Professor is by cyclic order i.e. to say first promotion on the post of professor, from the post of reader or Associate Professor as now christened on the basis of seniority-cum-merit and the next promotion is to be made on merit alone. This cyclic order is to be followed for succeeding vacancies. If on the given roaster, post to be filled by merit alone, any candidate is not available, such roster point is to be followed by seniority cum merit, but this will not result in change in cyclic order in operation where a merit point in roster is to be followed by seniority cum merit, the next post

which is otherwise due to be filled by seniority cum merit will continue to be filled on that basis.

It is on the aforesaid anvil the petitioner states that according to his information one Dr. Sumitra Jain, had been promoted on the post of professor by seniority cum merit. After Dr. Sumitra Jain, the next vacancy was to be filled by merit but Dr. Shanta Dubey was also promoted as professor in Microbiology against the vacancies of 1992, on seniority cum merit, suggesting that no candidate was available on merit criteria. Therefore, the vacancy which was to be filled on the basis of merit, after promotion of Dr. Sumitra Jain has been filled by seniority cum merit. Her promotion did not effect the cyclic order in operation and next vacancy roster was required to be filled as per seniority cum merit.

The petitioner in seniority below Dr. Shanta Dubey and above Dr. Sati Jain as Associate Professor in Pathology Department. Dr. Shanta Dubey and above Dr. Sati Punjabi. But instead of considering the case of petitioner on seniority cum merit Dr. Sati Jain has been promoted as professor of Microbiology against vacancy of 1993-94 on merit.

It is common ground that the department of Microbiology, in which the promotions were being considered had came into existence for the first time vide order dated 20.6.1984 and it was carved out of the existing department of the pathology as an independent specialty. Dr. Sumitra Jain had been promoted as professor of pathology department prior to creation of Dept. Of Microbiology.

The list of teaching staff attached with Pathology along with staff of department of microbiology was also published. As a result of bifurcation of Pathology Department as above and the staff as per Annexure 2 before the date of bifurcation Dr. Sumitra Jain was already promoted on the post of professor in Pathology in the year 1982-83. Amongst readers in Microbiology Dr. Shanta Dubey was at serial No.2, petitioner Dr. P.C.Merdia at serial No. 3, and Mrs. Dr. Sati Punjabi at serial No.4. At No. 1 was Dr. L.R.Tambi.

After the microbiology department came into existence, according to respondent, first vacancy on the post of professor occurred in 1992 against which Dr. Shanta Dubey was promoted on the basis of seniority-cum-merit as per commencement of cyclic order of promotion in the new department of Microbiology and, thereafter, when the second

vacancy of professor arose in the year 1993-94, which was to be filled on the basis of merit Dr. Sati Punjabi has been promoted on the basis of merit alone.

This fact is not in dispute that Microbiology department came into existence only in the year 1984 and promotions on the post of professor in Microbiology had taken place for the first time with the promotion of Dr. Shanta Dubey. In view of that stand taken by the respondent cannot be said to be unreasonable. On commencement of promotion in new department the Cyclic Order began with 1st promotion as per seniority-cum-merit, and followed with merit on commencement of cyclic order against the first vacancy the promotion was available to be filled by seniority cum merit to which Dr. Shanta Dubey had been promoted and the second vacancy when arose was to be filled by merit alone against which Dr. Sati Punjabi had been promoted. There being no dispute about the merit of Dr. Mrs. Sati Punjabi to be promoted on that basis the promotion of Dr. Sati Punjabi cannot be held to be in breach of cyclic order of promotion. No other issue has been raised before us.

The petition fails and is hereby dismissed.

No costs.

(RAJESH BALIA),J.